



**APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE**

MONDAY, FEBRUARY 1, 2010

**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA 85351**

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Harold Stewart, Economic Vitality Executive Director
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:09 p.m. Roll call confirmed the presence of Task Force members as noted.

1. Approval of Minutes from the January 11, 2010 Meeting

MOTION AND VOTE

CINDI EBERHARDT MOVED APPROVAL OF THE JANUARY 11, 2010 CHARTER REVIEW TASK FORCE MINUTES. LISA JOHNSON STONE SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. Public Comment

Denise Blommel spoke regarding Item 3, supporting Cindi Eberhardt's proposal to add Subsection P to Section 3 of Article 1 of the City Charter. The proposed language is broad enough to encompass further constitutional, legislative or judicial interpretations of Arizona's Gift Clause. This would be a sufficient safeguard for public funds. In addition, the Charter must

contain language capable of lasting through the ages, and this proposal fulfills that responsibility.

3. Discussion and possible action regarding recommendations to the City Council to add a provision to the City Charter relating to, or further regulating, certain public expenditures or subsidies to private entities.

Chair Twist noted that the Supreme Court recently issued an opinion that applies to this item. The current law states a public entity like the City may not spend public money on a private entity or individual unless there is a public purpose and the City receives direct consideration for that expenditure. The Supreme Court has clarified that consideration cannot be grossly disproportionate to the value that the City spends, or "so inequitable and unreasonable that it amounts to an abuse of discretion."

The Task Force discussed the proposed gift clause languages and the Supreme Court's recent opinion on the matter.

Cindi Eberhardt asked Harold Stewart from the Economic Vitality Division to clarify past practices. Mr. Stewart said the City typically informs potential and current businesses that it would help them with the process; however, that the City does not make loans or provide direct assistance. The use of incentives and subsidies come into play when the project provides a specific thing that the Mayor, Council, or community wants to have in the City, such as community goals or jobs. He added that 99 percent of the time, staff does not take projects forward that are asking for assistance.

If a project that is unique or special that fits in with community goals approaches the City for subsidies, research is then done on the company and staff works with them to introduce them to the planning process. If the enterprise seems to offer some extra value to the City, it will then be introduced to the City Manager and the City Council.

Cindi Eberhardt asked Sherry Scott for clarification regarding the Supreme Court's decision. Ms. Scott explained contractual deliverables would be things that the City could take into consideration in its proportionate value analysis. The City used to be able to consider indirect benefits such as sales tax, but will no longer be able to do that under the Turken decision. The City can only use the items listed in the contract as promised deliverables in a proportionate value analysis; what items are considered as part of the proportionate value analysis would be part of the public process.

Ms. Scott stated the City already requires a public purpose before it enters into any transaction where public money will be spent. The proposed language would require the City to more clearly identify within motions, resolutions, and ordinances what the public purpose is.

Jim Derouin stated that while not every business that has asked for subsidies has received money from the City, every single subsidy considered by the City Council since 1987 has been approved.

Jim Derouin asked for clarification regarding who calculated the amount of \$267 million that SkySong would be repaying the City over a 20-year period. Harold Stewart said those calculations were done approximately five years ago. He indicated staff could review those numbers and calculate an updated amount.

Brent Stockwell stated there was an economic fiscal analysis included in the staff report when that project was approved. A large portion of that \$267 million was from increased tax revenues in the area.

Alan Kaufman asked if the Economic Vitality Division would be affected by the Turken opinion. Harold Stewart stated he could not say exactly how it would be affected; however, it will affect the way projects are approached. The biggest effect may be what businesses ask for and how they ask for it.

Cindi Eberhardt said she put forth her proposal because she thought it was important to say to the voters that the City recognizes, supports, and affirms the anti-gifting that the Constitution has called out, in addition to state and federal limitations.

Denise Blommel suggested a statement of policy be placed in the Charter that says the City is concerned about the gift clause. She said the Task Force has four options; 1) Do nothing and rely on the Turken decision; 2) Go with Cindi Eberhardt's proposal, giving the City a chance to follow the law however it is interpreted; 3) Go with the Chairman's proposal with its more restrictive language, or; 4) Include the voter clause, which is incredibly expensive and restrictive. She urged the Task Force to adopt language that gives the greatest amount of flexibility to City staff.

Susan Bitter Smith asked Denise Blommel to share her opinion about differences between the languages proposed by Cindi Eberhardt and Chair Twist. Ms. Blommel stated that the term "direct consideration substantially equal to its expenditure" in Chair Twist's language could be litigated by businesses requesting those funds. The language in the Turken decision, specifically "gross disproportionate or inequitable", is equally litigious.

Jim Derouin clarified that the language proposed by he and Alan Kaufman does not call for a separate election and there would be no extra cost associated with it. The status quo is not acceptable in this matter.

Cindi Eberhardt stated she feels stronger about her proposed amendment since the Turken opinion was rendered.

Chair Twist read a question by Mr. Manson, as follows: "How does the Chairman's proposed language affect non-profits in regards their ability or lack thereof to provide 'direct consideration'?" He stated he does not believe the language affects the ability of a non-profit to provide direct consideration. In the Turken decision, the Supreme Court has said that for any individual, association, or corporation to receive money from the City, there must be a public purpose and the direct consideration cannot be inequitable, unreasonable or grossly disproportionate.

Susan Bitter Smith asked Sherry Scott if the Turken decision changes how the City does business with non-profit organizations. Ms. Scott explained that typically, when the City enters into a contract with a non-profit it is a lease or something of that nature, and the City is receiving a benefit to the public in return for the lease payment. Part of the contractual agreement requires the non-profit to provide the services to the public within certain hours of operation to ensure that the public is receiving the benefit. The City's practices with non-profit organizations will probably not change, since the City is always very aware of the gift clause and makes sure the contract is documenting the public benefits.

Susan Bitter Smith asked Sherry Scott whether the term “substantially equal” gives her pause regarding opening up litigious opportunities. Ms. Scott suggested using a term such as “contractual promise” in lieu of “direct consideration,” since “consideration” is a legal term. The term “substantially equal” could be viewed as stricter than “equitably in proportion”. She suggested changing the word “equal” to “proportionate value.” Ms. Scott also recommended changing the language “to its expenditure,” to “to the use of public funds”.

The Task Force had further discussion regarding the two proposals.

MOTION AND VOTE

JIM DEROUIN MOVED THAT THE FOLLOWING PROPOSAL BE ADOPTED AS FOLLOWS: "THE CITY SHALL NOT GIVE OR LOAN ITS CREDIT IN AID OF, NOR MAKE ANY DONATION, GRANT OR PAYMENT OF ANY PUBLIC FUNDS, BY SUBSIDY OR OTHERWISE, TO ANY INDIVIDUAL, ASSOCIATION, OR CORPORATION, EXCEPT WHERE THERE IS A CLEARLY IDENTIFIED PUBLIC PURPOSE AND THE CITY RECEIVES DIRECT CONSIDERATION SUBSTANTIALLY EQUAL TO ITS EXPENDITURE." THE TASK FORCE DIRECTED THAT THE SECTION BE ADDED TO ARTICLE 7, OR ANY OTHER ARTICLE THAT THE CITY ATTORNEY'S OFFICE WOULD DEEM MOST SUITABLE. ALAN KAUFMAN SECONDED THE MOTION, WHICH PASSED BY A VOTE OF SIX (6) TO ONE (1), WITH CINDI EBERHARDT DISSENTING.

- 4. Discussion and possible action regarding recommendations to the City Council revising Article 8, Section 2 relating to contracts for city improvements.**

Brent Stockwell explained this item is related to Chair Twist's previous recommendation that staff research and make recommendations for changes to this item. Staff has recommended the phrase, “or the City uses an alternate method of award allowed by law,” be added. This would give the City options other than using the lowest responsible bidder.

MOTION AND VOTE

ALAN KAUFMAN MOVED THAT IN ARTICLE 8, SECTION 2, THE BEGINNING OF THE SECOND SENTENCE, "WHEN REQUIRED, A" BE STRICKEN AND AT THE END OF THE SECOND SENTENCE THAT ", OR THE CITY USES AN ALTERNATE METHOD OF AWARD ALLOWED BY LAW." BE ADDED. CHARLIE SMITH SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

- 5. Discussion and possible action regarding recommendations to the City Council revising Article 7, Section 1 relating to acts requiring an ordinance.**

Sherry Scott stated staff is recommending these changes because other portions of the Charter sometimes require ordinances or resolutions in conflict with this list. The proposed changes clarify some issues, while keeping the language broad and not requiring many changes to internal processes.

Charlie Smith clarified this is recommending changes to what the Task Force has already approved.

MOTION AND VOTE

CHARLIE SMITH MOVED THAT ARTICLE 7, SECTION 1 BE FURTHER AMENDED AS PROPOSED. LISA JOHNSON STONE SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

“Article 7. Ordinances and Resolution

Sec. 1. Council to act by resolution, ~~or~~ ordinance OR MOTION.

The council shall act by resolution, ~~or~~ ordinance OR MOTION.

IN ADDITION TO OTHER ACTS REQUIRED BY LAW OR BY SPECIFIC PROVISION OF THIS CHARTER TO BE DONE BY ORDINANCE, ACTS OF THE COUNCIL SHALL BE BY ORDINANCE IF THEY:

- (1) ADOPT OR AMEND LAW OR ESTABLISH, ALTER, OR ABOLISH ANY CITY DEPARTMENT, OFFICE, OR AGENCY;**
- (2) PROVIDE FOR A FINE OR OTHER PENALTY OR ESTABLISH A RULE OR REGULATION FOR VIOLATION OF WHICH A FINE OR OTHER PENALTY IS IMPOSED;**
- (3) LEVY TAXES;**
- (4) REGULATE THE RATES CHARGED FOR UTILITY SERVICES PROVIDED BY THE CITY;**
- (5) AUTHORIZE THE BORROWING OF MONEY;**
- (6) CHANGE A PROPERTY’S ZONING DISTRICT(S);**
- (7) AMEND OR REPEAL ANY ORDINANCE PREVIOUSLY ADOPTED.”**

- 6. Discussion and possible action regarding recommendations to the City Council revising Article 1, Section 3(b) relating to flood control and drainage.**

ITEM 6 WAS CONTINUED TO THE NEXT MEETING.

- 7. Discussion and possible action regarding recommendations to the City Council relating to Article 15. Gender, including a discussion of whether the entire Charter could be amended with one ballot question to make it gender neutral, and repeal Article 15.**

Sherry Scott stated staff has summarized a recommendation on how to make the Charter gender neutral and provided that information to the Task Force. If the Task Force decides to try to make the Charter gender neutral, it could go on the ballot with one ballot question; however, the voters would need to see what those changes would look like. This would take up quite a bit of room on the ballot.

She requested more time to discuss this issue with the City Clerk and the election lawyer about the mechanics of this. It may be a very lengthy, complicated process; however, it could be accomplished. It may be easier to make the Charter gender neutral after the voters approve it.

Cindi Eberhardt suggested passing on this item, given the priorities of the Task Force.

Lisa Johnson Stone suggested bringing this item forward to the voters when it is simply the issue of gender, separate and apart from all of the substantive issues.

A DECISION ON A RECOMMENDATION HAS BEEN CONTINUED TO A FUTURE DATE.

8. Discussion and review of Task Force recommendations to date to determine whether additional additions, changes, or deletions are required.

ITEM 8 WAS CONTINUED TO THE NEXT MEETING.

9. Discussion regarding Task Force report to the City Council.

ITEM 9 WAS CONTINUED TO THE NEXT MEETING.

10. Review, discuss, and possibly amend draft agenda for February 22, 2010 meeting

The Task Force agreed to begin the next meeting with the flood control and drainage item, and continue on to a discussion of all recommendations to date, and then discuss the presentation of recommendations to City Council.

Staff was asked to provide a timeline for the November 2010 election.

Adjournment

With no further business to discuss, the meeting adjourned at 7:54 p.m.

Respectfully submitted,
A/V Tronics, Inc. DBA AVTranz.

Reviewed by
Brent Stockwell, Senior Advisor

Officially approved by the Charter Review Task Force on Monday, February 22, 2010.